

509.407

findings of fact based on a preponderance of the evidence. The fact-finding official provides the written findings of fact (together with a transcription of the proceeding, unless waived) within 20 calendar days after the hearing record closes.

509.407 Suspension.

509.407-1 General.

The suspending official is the designee under FAR 9.407-1(d).

509.407-3 Procedures.

(a) *General.* The procedures in 509.406-3 apply to suspension actions except as noted in paragraph (b) of this section.

(b) *Fact-finding.* (1) Fact-finding will not be conducted in an action:

(i) Based on an indictment.

(ii) When the suspending official finds no genuine dispute of material facts.

(2) If the action is not based on an indictment, the suspending official must coordinate with the Department of Justice or state prosecutorial authority through OIG. Based on the advice received, the suspending official will determine if fact-finding would impair substantial interests of the Federal or state Government. In an action not based on an indictment, a suspended party may:

(i) Identify to the suspending official material facts in dispute and the bases.

(ii) Request review and a written finding by a fact-finding official to resolve genuine disputes of material fact. For procedures involving a genuine dispute of material fact, see 509.406-3(d)(3).

PART 511—DESCRIBING AGENCY NEEDS

Subpart 511.1—Selecting and Developing Requirements Documents

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AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37209, July 9, 1999, unless otherwise noted.

Subpart 511.1—Selecting and Developing Requirements Documents

511.104 Use of brand name or equal purchase descriptions.

511.104-70 Solicitation provisions.

(a) Include the following immediately after each brand name or equal item description, with instructions for the offeror to complete the information:

Offering on:

Manufacturer's Name _____

Brand _____

Model or Part No. _____

(b) If the solicitation does not require samples for "or equal" offers, include the following notice in the list of brand name or equal items or component parts:

NOTICE

If you offer other than brand name items identified in this solicitation, you must provide adequate information for GSA to determine the quality of the product(s) offered.

(c) If you use brand name or equal purchase descriptions for some component parts of an end item, you may limit the application of the provision at FAR 52.211-6 to the specified components

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Subpart 511.2—Using and Maintaining Requirements Documents

511.204 Solicitation provisions and contract clauses.

(a) *Construction services.* Insert the clause at 552.211-71, Standard References, in solicitations and contracts for construction services when you expect the contract amount to exceed the simplified acquisition threshold, and the solicitation meets either of the following conditions:

(1) The solicitation cites documents or publications not furnished with the solicitation.

(2) The solicitation incorporates documents or publications by reference.

(b) *Federal specifications.* Insert the clause at 552.211-72, Reference to Specifications in Drawings, in solicitations and contracts citing Federal specifications which contain drawings.

(c) *Supply contracts that exceed the simplified acquisition threshold.* (1) Include the clause at 552.211-73, Marking, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(2) Include the clause at 552.211-74, Charges for Marking, in solicitations and contracts that include the clause at 552.211-73 or a similar clause.

(3) Include the clause at 552.211-75, Preservation, Packaging and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. You may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. In solicitations and contracts for FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers, use Alternate I.

(4) Insert a clause substantially the same as the clause at 552.211-76, Charges for Packaging and Packing, in solicitations and contracts for supplies to be delivered to GSA distribution centers.

(d) *Supply contracts.* Include the clause at 552.211-77, Packing List, in solicitations and contracts for supplies,

including purchases over the micropurchase threshold. In solicitations and contracts for FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers, use Alternate I.

[64 FR 37209, July 9, 1999, as amended at 68 FR 24378, May 7, 2003; 68 FR 28065, May 18, 2004]

Subpart 511.4—Delivery or Performance Schedules

511.404 Contract clauses.

(a) *Supply contracts.*—(1) *Single award schedules.* Insert 552.211-8, Time of Delivery, in solicitations and contracts instead of the clause at FAR 52.211-8. If you need to show different delivery times for different items or groups of items, use Alternate I.

(2) *Multiple award schedules.* Insert 552.211-78, Commercial Delivery Schedule (Multiple Award Schedule), in solicitations issued and contracts awarded under the multiple award schedule program.

(3) *Shelf-life items.* Use the following clauses in solicitations and contracts that require delivery of shelf-life items within a specified number of months from the date of manufacture or production (see 101-27.206-2 of the Federal Property Management Regulation):

(i) Insert 552.211-79, Acceptable Age of Supplies, if the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life, substitute Alternate I when required by the director of the commodity center concerned.

(ii) Insert 552.211-80, Age on Delivery, if the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(4) *Stock replenishment contracts.* Insert 552.211-81, Time of Shipment, in solicitations and stock replenishment contracts that do not include the Availability for Inspection, Testing and Shipment/Delivery clause at 552.211-83 and require shipment within 45 calendar days after receipt of the order. If shipment is required in more than 45 days, use Alternate I.

(5) *Notice of shipment.* Include 552.211–82, Notice of Shipment, in solicitation and contracts for supplies when you need to have a notice of shipment from the contractor.

(6) *Indeterminate testing time.* Insert 552.211–83, Availability for Inspection, Testing and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which time frames cannot be determined in advance. If the contract is for stock items, use Alternate I.

(b) *Construction contracts.* Insert the clause at 552.211–84, Non-Compliance with Contract Requirements, in solicitations and contracts for construction when you expect the contract amount to exceed the simplified acquisition threshold.

Subpart 511.6—Priorities and Allocations

SOURCE: 69 FR 55934, Sept. 16, 2004, unless otherwise noted.

511.600 Scope of subpart.

FAR Subpart 11.6 implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce (DOC) regulation (15 CFR part 700) to assure timely delivery of industrial resources (products, materials, and services) in support of approved national defense, energy, and civil emergency preparedness (Homeland Security) programs. Pursuant to DPAS Delegation 3, DOC delegated GSA the authority to use the DPAS in support of the GSA Federal Supply system. This subpart implements the DPAS within GSA.

511.601 Definitions.

As used in this subpart—

Approved program means a program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Department of Homeland Security Under Secretary for Emergency Preparedness and Response under the authority of the Defense Production Act, the Stafford Act, and Executive Order 12919, or the Selective

Service Act and related statutes, and Executive Order 12742. See Schedule 1 of 15 CFR part 700 for a list of Delegate Agencies, approved programs, and program identification symbols at <http://www.bis.doc.gov/DefenseIndustrialBasePrograms/OSIES/DPAS/Default.htm>.

Authorized person means a Delegate Agency, or other entity either permitted under 15 CFR part 700, or explicitly authorized by DOC to issue DPAS rated orders.

Defense Priorities and Allocations System (DPAS) means the regulation published at 15 CFR part 700 that requires preferential treatment for certain contracts and orders placed by a Delegate Agency in support of an approved program.

Delegate Agency means an agency of the U.S. Government authorized by delegation from DOC to place priority ratings on contracts or orders needed to support approved programs.

Rated order means a prime contract, a subcontract, a purchase order, or a delivery or task order in support of an approved program issued in accordance with the provisions of the DPAS regulation (15 CFR part 700).

511.602 General.

(a) The purpose of the DPAS is to assure the timely availability of industrial resources to meet current national defense, energy, and civil emergency preparedness program requirements and to provide an operating system to support rapid industrial response in a national emergency. The primary statutory authority for the DPAS is Title I of the Defense Production Act of 1950, as amended, with additional authority from the Selective Service Act of 1948, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Executive Orders 12919 and 12742 delegate this authority to the DOC to administer the DPAS. The DOC is further authorized to redelegate to heads of other departments and agencies (Delegate Agencies) authority under the DPAS for the priority rating of contracts and orders in support of approved programs. Within the DOC, the Office of Strategic Industries and Economic Security (SIES)

is assigned the implementation, administration, and compliance responsibilities for the system.

(b) The DPAS is published in the Code of Federal Regulations at 15 CFR part 700. This regulation provides an overview, a detailed explanation of operations and procedures, and other implementing guidance, including information on special priorities assistance and compliance.

(c) Orders placed under DPAS are "rated orders." Rated orders must receive preferential treatment only as necessary to meet delivery requirements. Rated orders are identified by a rating symbol of either "DX" or "DO" followed by a program identification symbol. All "DO" rated orders have equal priority with each other and take preference over unrated orders. All "DX" rated orders have equal priority with each other and take preference over "DO" rated orders and unrated orders. A program identification symbol indicates which approved program is supported by the rated order.

(d) Only authorized persons may place an order containing a DPAS priority rating.

(e) Within GSA, the Federal Supply Service (FSS) has been delegated the authority to issue rated orders to meet approved national defense, energy, and civil emergency preparedness program requirements of the supply distribution program. The Commissioner, FSS, shall issue additional guidance, as may be necessary, to ensure effective implementation of its delegated DPAS authority, such as the exclusions listed in paragraph F(2) of the 1998 DOC DPAS Delegation 3.

(f) Executive Order 12919 defines the jurisdictional limitations as set forth in 15 CFR 700.18(b).

511.603 Procedures.

(a) A DPAS rating may be placed against an entire contract at time of award or an individual order issued under an existing, otherwise unrated, contract.

(b) When a DPAS rating is placed against an entire contract, the contracting officer must include the clause and provision prescribed at FAR 11.604, as well as the elements listed in

paragraphs (c)(1) through (c)(3) of this section (see 15 CFR 700.12).

(c) When a DPAS rating is placed against an individual order issued under an existing, otherwise unrated, contract, the order must include the following elements (see 15 CFR 700.12):

(1) The appropriate priority rating symbol (*i.e.*, either "DO" or "DX") along with the program identification symbol. As required by the 1998 DOC DPAS Delegation 3 to GSA, when GSA contracting officers place DO rated orders, they will use program identification symbol K1. When placing a DX rated order for other agencies, GSA contracting officers will use the requesting agency program identification symbol. When a Delegate Agency places its own orders, it uses its own program identification symbol. (See Schedule 1 of 15 CFR part 700 for a listing of Delegate Agencies, approved programs, and program identification symbols.)

(2) A required delivery date. The words "as soon as possible" or "immediately" do not constitute a required delivery date. A specific date or a specified number of days ARO (after receipt of order) is acceptable.

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order of an individual authorized to place rated orders.

(4) A statement that reads substantially as follows:

"This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700)."

(d) Multiple and Single Award Schedule contracts are not rated at time of award. Individual DPAS rated orders must include the elements listed in paragraphs (c)(1) through (c)(4) of this section.

511.604 Solicitation provision and contract clause.

The contracting officer must insert in full text the clause at 552.211-15, Defense Priorities and Allocations System Requirements, in Single and Multiple Award Schedule solicitations and resultant contracts, except where the

contract is wholly for products, materials, or services excluded from DPAS applicability (see 15 CFR 700.18).

PART 512—ACQUISITION OF COMMERCIAL ITEMS

AUTHORITY: 40 U.S.C. 486(c).

Subpart 512.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) *Solicitation provisions and clauses.* Insert these provisions or clauses in solicitations or solicitations and contracts, respectively, in accordance with the instructions provided:

(1) 552.212–70, Preparation of Offer (Multiple Award Schedule), in solicitations and contracts issued under the multiple award schedule program.

(2) 552.213–71, Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items, when listed clauses apply. The clause provides for incorporation by reference of terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practice. If necessary, tailor this clause.

(3) 552.212–72, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisitions of Commercial

Items, when listed clauses apply. The clause provides for the incorporation by reference of terms and conditions required to implement provisions of law or executive orders that apply to commercial item acquisitions.

(4) 552.213–73, Evaluation-Commercial Items (Multiple Award Schedule), in multiple award schedule solicitations. Use this provision instead of FAR 52.212–2.

(b) *Use of required provisions and clauses.* Use only those provisions and clauses prescribed in this part. Unless the use of a provision or clause prescribed elsewhere in the GSAR is consistent with customary commercial practice for the item being acquired, disregard contrary instructions. Provisions and clauses prescribed in this part will be revised to reflect the applicability of new statutes and executive orders.

(c) *Discretionary use of GSAR provisions and clauses.* Consistent with the limitations contained in FAR 12.302(c), include in solicitations and contracts by addendum other GSAR provisions and clauses.

(d) *Use of additional provisions and clauses.* The Senior Procurement Executive must approve the use of a provision or clause that is either not:

(1) Prescribed in the FAR or GSAR for use in contracts for commercial items.

(2) Consistent with customary commercial practice.

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